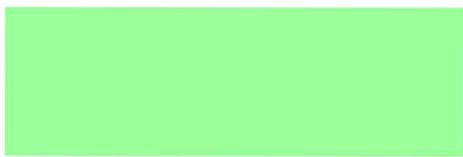


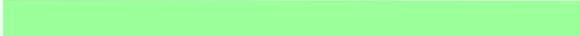


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **OCT 24 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, we will remand the petition for further action and consideration.

The petitioner identifies itself as a religious and social service mission. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a religious minister and sectorial secretary. The director determined that the petitioner failed to successfully complete a compliance review site visit and failed to establish that the beneficiary would be employed in a qualifying position.

On appeal, the petitioner submits a brief and additional evidence.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
- (ii) seeks to enter the United States--
 - (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
 - (II) before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
 - (III) before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and
- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(12) reads:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by [U.S. Citizenship and Immigration Services

(USCIS)] through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant on November 13, 2012. In an addendum to the Form I-360 petition, the petitioner identified itself as "the New York Sector" of [REDACTED] in India, with responsibility for North America, Central America, the Caribbean and Hawaiian Islands. In a separate addendum and in a November 7, 2012 letter, the petitioner indicated that the beneficiary's primary work location would be the "Sectorial Office" located at [REDACTED] New York, but that he would also work at a retreat center in [REDACTED] Missouri, and would regularly travel to other countries within the sector and to additional locations as required by [REDACTED]

On February 15, 2013, the director issued a Notice of Intent to Deny the petition (NOID) based in part on the findings of a December 27, 2012 site visit to the petitioner's address in [REDACTED] New York, and subsequent communications with the beneficiary and the petition's signatory. The director stated that, during the site visit, the investigating officer was unable to verify the petitioner's compliance to service regulations:

The visiting officer states that the site is a private house with posted signs that read as: Yoga Medication [sic]/ [REDACTED]. The officer did not see any office or work space as he only gained accessed [sic] to the foyer of the house. As the officer was to speak with a tenant who did not provide any information, he made telephonic contact with the signatory, [REDACTED] who resides in Maryland. Evidence provided by the signatory includes the following: organization's activities for 1998, 1999 and 2000 and the same tax year document provided in the petition. No current documents had been provided to show any religious activity at the site. . . .

On the officer contact with the beneficiary via a phone call on January 3, 2013, it has been noted that the beneficiary was in Tennessee and was scheduled to fly back to New York and on the same day, fly to Washington DC, that the contact was disconnected and his message went straight to voicemail. Any attempt by the officer was unsuccessful and he was not able to speak with him, that to the officer, it seems that the beneficiary has been avoiding contact with the visiting officer either by phone or in person. The beneficiary's phone call on January 13, 2013, was to inquire if the document sent by the signatory has been received. The beneficiary stated that he is

on the road most of the time and has minimal access to a phone. On the other hand, the officer received return email, fax and missed phone call from the signatory, apologizing on the beneficiary's behalf.

In a March 6, 2013 letter responding to the NOID, the petitioner stated that its facility in [REDACTED] New York, is a former four-apartment building that has been converted and now includes "distinct residential, administrative and religious/spiritual function areas." The petitioner submitted a floor plan of its facility and photographs of the exterior of the building, including a sign. The petitioner also submitted labeled photographs purportedly depicting the various religious, administrative, and residential areas inside the building, including photographs of religious activities and events at the facility.

As additional evidence of its current operation and activities, the petitioner submitted a copy of its January 2013 newsletter, which included a New Year's message from the beneficiary. The petitioner also submitted flyers and printouts from its website regarding various events held by the petitioning organization at its [REDACTED] address and other locations. In addition, the petitioner submitted copies of its [REDACTED] statements for the months of November 2012 through February 2013, with notations about deposits and withdrawals.

Regarding the investigating officer's inability to reach the beneficiary, the petitioner asserted that the beneficiary did not intend to avoid contact with the investigating officer, but "was travelling extensively over the past month to conduct his [REDACTED] work," making phone communication difficult. The petitioner submitted "a rough review of [the beneficiary's] travel itinerary in the weeks around the time of communication with the Officer."

On May 7, 2013, the director issued a Request for Evidence (RFE) related to other issues of eligibility. The director denied the petition on January 22, 2014, finding in part that the petitioner failed to satisfactorily complete a compliance review site visit. The director summarized the findings of the site visit, as discussed in the NOID, and found that the investigative officer was unable to verify the petitioner's compliance with regulations based on the "unavailability of both the signatory and the beneficiary at the site check and over the phone contacts," and "insufficient documentation." The director acknowledged the petitioner's submission of photographs and a floor plan in response to the NOID, but found that the "veracity of the documentation was not verified" because of the investigating officer's lack of access to the premises during the December 27, 2012 site visit.

In a brief submitted on appeal, the petitioner contends that both the signatory and the beneficiary expressed "their willingness and eagerness" to cooperate with the compliance review. The petitioner asserts that "there were, in fact, over twenty (20) email correspondences and over fifteen (15) phone call related voice mail messages, attempts or conversation [sic] either between the Site Visit Officer and the Signatory or between the Site Visit Officer and the Beneficiary." The petitioner submits copies of email communications between the signatory and investigating officer dated between December 27, 2012, and January 22, 2013, as well as affidavits from the signatory and the beneficiary regarding their communications with the officer. Regarding the director's statement that the petitioner submitted "insufficient evidence" during the compliance review, the petitioner contends that it responded to each

of the investigating officer's requests for documentation. The petitioner also notes that the investigating officer stated in a January 7, 2013 email, "Thank you, I have everything needed from your organization."

As stated above, the director found that the investigating officer's inability to access the petitioner's facility raised doubts about whether the organization was operating as stated in the petition. However, the director did not discuss the organizational literature, flyers, and financial evidence submitted by the petitioner as evidence of its operation and activities in response to the NOID. Further, the director did not specify how the documentation submitted by the petitioner during the compliance review was insufficient, and did not address the petitioner's explanations regarding the "unavailability" of the signatory and beneficiary. The submitted evidence supports the petitioner's assertions that it is a currently operating religious organization and that it was responsive to the investigating officer's communications following the site visit. Accordingly, we will remand the matter for the director to determine whether the petitioner has overcome the findings of the compliance review. On remand, the director may request any additional evidence and conduct any additional verification or compliance review deemed warranted. The director must, pursuant to 8 C.F.R. § 103.2(b)(16)(i), provide the petitioner an opportunity to respond to any derogatory information upon which the new decision may be based, and should allow the petitioner to submit additional evidence in support of its petition within a reasonable period of time.)

The second issue to be discussed is whether the petitioner has established that the beneficiary will be employed in a qualifying position. The regulation at 8 C.F.R. § 204.5(m)(2) provides that, in order to be eligible for classification as a special immigrant religious worker, an alien must be coming to the United States to work in a full time, compensated position either as a minister or in a religious vocation or a religious occupation.

The regulation at 8 C.F.R. § 204.5(m)(5) includes the following definitions:

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister. ...

Religious occupation means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
- (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.
- (D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

Religious vocation means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of individuals practicing religious vocations include nuns, monks, and religious brothers and sisters.

Religious worker means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

The regulation at 8 C.F.R. § 204.5(m)(9) requires the petitioner to submit the following documentation if the alien will work as a minister:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

- (A) The denomination's requirements for ordination to minister;
- (B) The duties allowed to be performed by virtue of ordination;
- (C) The denomination's levels of ordination, if any; and
- (D) The alien's completion of the denomination's requirements for ordination.

The petitioner indicated on the Form I-360 petition that the beneficiary would be working in a ministerial position, and listed the title of the proffered position as "Religious Minister [REDACTED]; Sectorial Secretary." In a November 7, 2012 letter accompanying the petition, the petitioner stated that the beneficiary has served as a full time [REDACTED] since completing his ministerial training in 1979. The petitioner also stated that the beneficiary is a "Wholetimer ([REDACTED])" [REDACTED], which it defined as one who chooses "to live as [a] renunciate[. . .], taking permanent vows of poverty, chastity & obedience, and wearing bright orange uniforms to signify this renunciation," as opposed to "family [REDACTED], who are householders, with families and a relatively normal life." The petitioner stated that "the status of [REDACTED] is required in order to be assigned leadership positions in the [REDACTED] hierarchical religious structure." The petitioner submitted a January 7, 2012 "Certificate of Authorization" from the Central Board of [REDACTED], [REDACTED] in [REDACTED] India. The certificate, valid for three years from date of issue, certified that the beneficiary completed the "[REDACTED] Training Course" in January, 1979, and recognized him as a qualified minister of [REDACTED] in good standing. In addition, the petitioner submitted a January 7, 2012 letter from [REDACTED], listing the various positions held by the beneficiary since 1962.

On the petition, the petitioner described the beneficiary's proposed duties as follows:

[REDACTED] Meet and minister [REDACTED] followers; Lead [REDACTED] initiatives, meditation, religious ceremonies; Teach and perform meditation and Yoga; Impart skills for leadership & service activities; Provide inspirational direction and philosophical education. SECTORIAL SECRETARY: As highest administrator/manager of [REDACTED] in US (NY Sector) – Ex-officio member of all [REDACTED] boards & committees; report to & take instructions from [REDACTED] Central; Supervise all [REDACTED] staff & volunteers; Ensure education of [REDACTED] followers.

In its November 7, 2012 letter, the petitioner stated that the beneficiary will frequently be required to travel, and that "[a] large part of every day is dedicated to the duties related to the core responsibility of every [REDACTED] the practices and teaching of Spiritual Yoga, meditation, and a healthy lifestyle." The petitioner submitted a "typical" daily schedule for a "[REDACTED]" The schedule listed 9.17 hours of "Obligatory Religious Duties of Ordained Religious Minister" (including chants, meditations, meditation lessons, yoga [REDACTED] yoga instruction, and the study of scriptures), and 6 hours of "Tasks per Posting assigned by [REDACTED]" (including office work and "Public engagements etc... as planned").

The director stated in the February 15, 2013 NOID that, based on the findings of the compliance review, the duties of the proffered position appear to be primarily that of an executive rather than a minister and to be “over 50% administrative in nature.” In response, the petitioner asserted in its March 6, 2013 letter that the beneficiary’s executive duties as sectorial secretary are “incidental to” his duties as a religious minister, and that “[o]nly certified [REDACTED] and in particular the renunciate [REDACTED] monks and nuns who are [REDACTED] are given these high-level structural leadership positions in the [REDACTED] mission.” The petitioner further asserted that the beneficiary holds the status of “[REDACTED]” which is “the highest level of religious/spiritual status in [REDACTED]” The petitioner submitted a copy of a religious text, entitled [REDACTED] which includes a statement that, “[a]s far as possible, only [REDACTED] will be elected or nominated for any responsible post of the [REDACTED]”

In the May 7, 2013 RFE, the director stated that it was unclear whether the beneficiary would be working as a minister or in a religious occupation or vocation. The director stated that, according to the petitioner’s response to the NOID, the majority of the beneficiary’s duties appeared to relate to his role as sectorial secretary. In response, the petitioner submitted a May 31, 2013 letter from the secretary of the Central Board of [REDACTED], [REDACTED], stating that the beneficiary is a Senior [REDACTED] and was declared a [REDACTED] in 2003. The letter further states that, as sectorial secretary, the beneficiary “has been assigned with the highest responsibility in New York Sector, in religious as well as administrative capacity.” The petitioner also submitted a May 31, 2013 letter from the general secretary of [REDACTED], providing a job description for the position of sectorial secretary, and describing the position as “the highest religious/spiritual status, and administrative position in the Sector.” The job description indicated that the sectorial secretary performs “chief executive and head clergy duties,” including both administrative and religious tasks.

In denying the petition, the director found that the petitioner failed to establish that the beneficiary would be working in a qualifying position. The director stated that the evidence establishes that the beneficiary qualifies as an ordained religious minister according to the denomination’s standards. However, the director found that the beneficiary would not be working “solely as a minister” as required under 8 C.F.R. § 204.5(m)(5)(D), but would instead be spending most of his time on executive or administrative duties in his role as sectorial secretary. The director also found that the proffered position does not qualify as a religious occupation as the duties are primarily secular in nature.

On appeal, the petitioner contends that the beneficiary will work “solely in the vocation of a minister of the religious denomination.” The petitioner states that the position “is clearly described as that of a minister/monk and the role of a top senior religious administrator whose primary duties are to perform the chief executive and head clergy duties to spiritually lead the organization and to promote the spiritual teachings and practices of [REDACTED]” In its brief, the petitioner states that, per the submitted schedule, “[m]ore than 60% of daily work involves purely spiritual duties; and only zero (during weekends) to up to 30% (Monday thru Friday) involves administrative work incidental to being a head clergy and top senior administrator of the organization.” The petitioner again asserts that the position of sectorial secretary is a leadership role that is only assigned to ordained ministers or [REDACTED] within [REDACTED]

As stated previously, the director found that the proffered position did not qualify as a ministerial

position or a religious occupation under 8 C.F.R. § 204.5(m)(5). However, we find that the petitioner has submitted sufficient evidence to establish that the proffered position meets the regulatory definition of a religious vocation. We conduct appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The petitioner has submitted evidence establishing that its denomination has “a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion.” Further, the submitted evidence demonstrates that the beneficiary is a member of that class and has made a formal lifetime commitment to a religious way of life. Accordingly, the petitioner has established that the beneficiary will be working in a qualifying position and we will withdraw the director’s findings on this issue.

As discussed above, the matter will be remanded for the director to determine whether the petitioner has satisfied the regulation at 8 C.F.R. § 214.2(r)(16). The director may request such additional evidence as deemed warranted and must give the petitioner a reasonable opportunity to submit additional evidence in support of its position.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The director’s decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.